IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 8070 of 1998

Between:

MSR Murthy, S/o Venkatshawarlu
R/o C/o Sri M.Mohan Raju Parvathinagar,
Near Dr.A.S.Rao Nagar, Hyderabad.

..... PETITIONER

AND

1 Industrial Tribunal-I,
Hyderabad.
2 General Manager(PS),Syndicate Bank,HO-Manipal,
Karnataka State.
3 Deputy General Manager,Syndicate Bank,Zonal Office,
Somajiguda,Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ Order or Direction more particularly one in the Nature of a Writ of Certiorary, call for the records leading upto and inclusive of the orders in I.D. No.87/94,dt.18-3-97 passed by the R-1 herein, confirming the orders in pro20:PD:IRD:DA:7,dt.5-3-92 of R-2 herein, which are 14 turn confirming the order of dismissal passed by the R-3 herein in Proc.PRD/DGM/HYD/91/34,dt.13-11-91 and consequentially set aside the same as illegal, arbitrary and violation of established principles.

Counsel for the Petitioner:MR.E.KALYAN RAM

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the respondents 2 and 3: Mr.K.Srinivasa Murthy

The Court made the following:

O R D E R:

This writ petition is filed by the workman being aggrieved by the award of the 1st respondent-Industrial Tribunal, Hyderabad in
I.D. NO.87/94, dated 18-03-1997, wherein, the reference of the petitioner was dismissed.

It is the case of the petitioner-workman that he worked in the Indian Navy as Seaman from 1964 to 1974 and he had several meritorious medals to his credit. Thereafter, he got appointed in the respondents-bank as Sub-Staff with effect from 21-04-1975. While, he was working at Santhamagalur branch, he was promoted as clerk during 1977. Thereafter, he was transferred to Santhanuthalapadu branch and further he was shifted to Chirala. Again in 1986, he was transferred to Ongole and again to Singarayakonda in 1991. It is stated that while he was working at Ongole, he received a charge sheet dated 28-08-1998 issued by the Assistant General manager (IR Cell) ZO: Hyderabad. It is alleged in the said charge sheet that while the petitioner was working as a Cashier at Chirala, on 12-08-1985, one depositor by name Smt. T.Lingamma made an application for closure of her " Pigmi Deposit Account" and for payment of the amount thereunder. The said Lingamma applied for a loan of
Rs. 2,400/- for the purpose of her business on the security of 'Pigmi Deposit Account' having a balance of Rs. 3,225/-. It is further alleged in the charge sheet that on 12-08-1985 the necessary slips were prepared at the branch and two of debit slips dated 12-08-1985, for Rs.4,490/- and for Rs.378.20 ps. relating to "Pigmi Deposit Account" and interest on deposit respectively and payment orders were issued instructing to deduct Rs.2,741.35 ps. along with relevant credit slips towards LD A/c. No.404/84 for Rs.2,741.35 ps. and they were sent to him for payment and for the purpose of recovery. Further, it was stated in the charge sheet that the petitioner deducted an amount of Rs.2,741.35 ps from out of the total sum of Rs.4,608.20 ps and paid the balance of Rs.2,126.85 only to the said Lingamma. Thereby the petitioner failed in not accounting for the balance of Rs.2,741.35 ps. in the books of the branch. The loan amount was also not adjusted. The main charge against the petitioner was that he committed an act prejudicial to the interest of the bank. Subsequently,

the bank recovered the said amount of Rs.2,741.35 ps from the Housing Loan Amount of the petitioner. It is also stated that in response to the said charge sheet, the petitioner submitted a detailed explanation stating that it is known to everybody that the cashier's role is only to make the payment or receive the payment on the basis of the vouchers prepared. It is for the other authorities, who maintain the account to make necessary entries. Further, the petitioner submitted his explanation stating that the Cash Scroll prepared by him on that day and the Cash Scroll of the Scroll Officer did tally and no discrepancy whatsoever was noticed and therefore, he cannot be charged of having committed an act prejudicial to the interest of the bank. However, the Assistant General Manager (IR Cell) by order dated 15-08-1988, appointed the Assistant Personnel Officer, Zonal Office, Vijayawada as an Enquiry Officer and Officer (Per.Cell) as a Management Representative. After conducting a detailed enquiry into the matter, the Enquiry Officer submitted his report holding that the petitioner is guilty of the charges. After following the formalities, the disciplinary authority issued proceedings dismissing the petitioner from the service. Aggrieved by the same, the petitioner filed an appeal before the appellate authority and the same was dismissed on 5-3-1992. Therefore, he sought for reference before the 1st respondent-Industrial Tribunal-I, Hyderabad, under Section 2-A of the Industrial Disputes Act for adjudication of the issue as to whether the action of the management of Syndicate Bank, Hyderabad in dismissing Shri N.S.R.Murthy Clerk from service w.e.f.13-11-1991 is justified? According to the petitioner, the Tribunal did not appreciate the matter properly and negatived the reference, which is arbitrary, illegal and liable to be set aside.

Heard both sides.

The learned counsel for the petitioner strenuously contended that the charges are vague, in nature, and in fact, the enquiry was held only

on 18-09-1990, on which day, the Management Representative furnished the copies of list of witnesses and relevant documents in support of management's case to the Enquiry Officer and they were admitted in evidence on the same day, and only one witness i.e. Vigilance Officer, who investigated the case was examined and he was asked to cross-examine him on the same day. Therefore, it is clear that the petitioner was furnished with list of witnesses and other related documents on the same day and therefore, the authorities did not give any opportunity to the petitioner to go through the material and to defend his case properly. Therefore, it is needless to say that the said act of the enquiry officer caused prejudice to the interest of the petitioner. Even otherwise, the charges are vague and the charge sheet did not speak as to any misappropriation of amount committed

by the petitioner and thereby, any loss has been caused to the bank. Inspite of the fact that the charge sheet itself is vague and in view of the circumstances of the case, as well as without there being any direct evidence, the Enquiry Officer exceeded his brief and recorded a finding that the petitioner misappropriated the amounts in question, which was not at all mentioned in the charge at any point of time. Further, the learned counsel for the petitioner submitted that the petitioner had put in 17 years of clean service and during that time there was no remark at all and even the present misconduct is only negligence on the part of the petitioner and not any prejudicial act committed by him as alleged by the respondent-bank. Therefore, even assuming that the said charge is proved, the punishment of dismissing the petitioner from service is shockingly disproportionate to that of the misconduct alleged to have been proved against him. Therefore, the award of the 1st respondent-Tribunal is liable to be set aside and the petitioner is entitled to reinstatement into service with all back wages and attendant benefits.

Though no counter is filed, the learned counsel for the respondents-bank strenuously contended that there is no necessity of any specific charge being framed against the petitioner as to misappropriation of amounts and loss caused to the bank, since it is a matter of record. Admittedly, in the evidence, the petitioner himself accepted as to the receiving of the two slips meant for the said transaction of deducting the amounts from the account of the said Lingamma. In fact, the petitioner himself had paid the amounts and therefore it must be deemed that the petitioner has accepted the charge and committed misappropriation at least for a temporary period. Therefore, it cannot be said that the Enquiry Officer has exceeded his brief and gave a finding that the petitioner had committed misappropriation. Therefore, misappropriation of the said amount is a corollary in the nature of the events that happened on 12-08-1985. Therefore, the disciplinary authority and the appellate authority of the bank did not commit any illegality or infirmity calling for the interference of this Court under Article 226 of the Constitution of India. Further, there was no prejudice caused to the petitioner simply because the enquiry was conducted on one day and on the same day itself the list of witnesses and the relevant documents were furnished to him. Further, he was very well defended by the Defence Assistant and he was given full opportunity of participating in the proceedings. Further, the bank is dealing with the financial transactions and requires to deal with public money with all care and caution. The petitioner has misused the position held by him. May be, the petitioner had no bad conduct to his credit for all the 17 years, but that itself does not mean that the petitioner is entitled to any relief. Therefore, the punishment imposed is proportionate with that of the misconduct

alleged against the petitioner and no interference can be made by this court.

I have given my earnest consideration to the respective contentions on either side and perused the material available on record as well as the award of the 1st respondent-Tribunal.

At the outset, I am of the opinion that the charge does not include the allegation of misappropriation and any loss caused to the bank. Therefore, it was not proper on the part of the Enquiry Officer to come to a conclusion that the petitioner had misappropriated the bank amount while dealing with the account of the said Lingamma. While management witness -M.W.1 crossed by the defence as to what was the basis to show that the petitioner misappropriated the amounts, it was the answer that since the petitioner accepted that he received two slips and the amount was not credited to the bank, it must be deemed that the petitioner has committed misappropriation. The said finding of the Enquiry Officer is not convincing and does not stand the scrutiny of law.

In a similar case, this court in the case of **P.Balachandra Reddy Vs.The Depot Manager, APSRTC, Ananthapur and others ()** at paragraphNo.5 of the order held as under:

> "The first charge, which according to the Labour Court is the material charge, is that the petitioner failed to issue tickets to a batch of 13 passengers even after collecting the requisite fare of Rs.16-90 ps. from them. The question is whether the punishment of removal is justified on the facts and circumstances of the case. The Labour Court proceeds to consider this aspect of the matter as follows:-
>
> > I would like to examine as to how far the respondent is justified in imposing the capital punishment of removal from service and I would like to examine whether the workman is entitled to get any alternative punishment while invoking the Sec.11(a) of the Industrial Disputes Act. On this aspect I would like to mention that any punishment should be awarded corresponding to the nature of the proved charge. In this case the workman is involved in proved charges of misconduct with regard to the receiving of illegal gratification with a dishonest intention and thereby defrauded the respondent Corporation. When once the workman is involved in proved misconduct of receiving illegal gratification with a dishonest intention I consider that the proper punishment for the workman is removal from service and I do not see any reason to interfere with the findings of the same."
>
> It will be immediately noticed that the charges do not mention anything about any illegal gratification of dishonest intention to defraud the Corporation. It is obvious that

> the Labour Court was under the misapprehension that the first charge related to illegal gratification and dishonest intention of defrauding the respondent-Corporation and on that basis justified the punishment of removal imposed on the petitioner. The Labour Court is clearly not right in proceeding on the erroneous basis that the charge related to illegal gratification and dishonest intention of defrauding the Corporation and upholding on that basis the punishment of removal imposed on the petitioner.

However, so far as to the finding that there is negligence on the part of the petitioner is concerned, the same is based on surmises. This is a case where the petitioner was issued with a charge sheet after more than three years of the incident. It is also pertinent to note that the said Lingamma was not examined in the proceedings and the only evidence relied upon is as to the books of accounts and other material of the bank. May be the petitioner had paid the amount since he was asked to face charges after more than 3 ½ years. Simply because the petitioner paid the amount which is meager that itself does not mean that the charges, as such, are proved, without there being any evidence.

Be that as it may, in a domestic enquiry, some evidence was adduced and it was found that the petitioner was guilty of his negligence while dealing with the finance of the bank. In so far as this aspect is concerned, it is not possible to interfere with the findings of the disciplinary authority as well as the appellate authority and the Tribunal under Article 226 of the Constitution of India. But nonetheless, it is the case of the petitioner that he had put in 17 years of clean service, which is not disputed. Apart from the fact that the charge was only as to the negligence of duty attended to by the petitioner, it is also to be noticed that when the aspect was brought to his notice, immediately he himself reimbursed the amount to the bank.

Under these circumstances, I am of the considered opinion that the punishment of dismissal from service in a case of negligence on the part of the petitioner as to dealing with the finance of the bank cannot be said to be proportionate to that of the misconduct alleged. Therefore, the same is shockingly disproportionate to that of the misconduct alleged in the nature of the charges and the past conduct of the petitioner. The petitioner, however, is liable to be inflicted with a lesser punishment.

Generally speaking, in a case like this, it is not for this court to substitute the suitable punishment to be imposed by the disciplinary authority. However, the misconduct related to the year 1985 which is sought to be enquired into in the year 1988, and now, we are in the year 2005 and this writ petition was filed in the year 1998. Therefore, it is not a fit case to remand for the purpose of substituting appropriate punishment. It is better to deal with case the at this level to give a quietus. Therefore, the award passed by the Labour Court is

modified to read as :

> "The petitioner is entitled to reinstatement with continuity of service but without any back wages and without any attendant benefits for the period for which he was out of service."

The writ petition is allowed to the extent indicated above. No costs.

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29-06-2005

Mjl/*

That Rule Nisi has been made absolute as above.

Witness the Hon'bls Sri Devinder Gupta, the Chief Justice on this Wednesday, the twenty ninth day of June, two thousand and five.

To,

1 Industrial Tribunal-I, Hyderabad.
2 General Manager(PS),Syndicate Bank,HO-Manipal, Karnataka State.
3 Deputy General Manager,Syndicate Bank,Zonal Office, Somajiguda, Hyderabad.

4. 2 CCs to G.P. for Labour, High Court Buildings, Hyderabad.

5. 2 CD copies.